IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITIOIN NO.5178 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. S.D. Patil for the petitioner.

Mr. B.D. Joshi for the respondent.

CORAM : ANOOP V. MOHTA, J.

DATE : 05.12.2005

. By the present petition, a challenge is made to the order of rejection of the amendment application.

2. Heard the learned Counsel appearing for the parties. The contention that the separate suit has been filed by the plaintiff, whereby, the plea in reference to surrender deed executed on 12.12.2002, has been raised

and challenged. Therefore, the impugned order of rejection of proposed amendment, based on the same is correct.

3. After going through the amendment as raised and in the facts and circumstances of the case, as the Court has already allowed in part proposed amendment in so far as pleadings in reference to ready and willing to perform the part of the contract, I see there is no reason to disallow the remaining amendment in question. The ground of delay in raising this amendment application and or unsatisfactory explanation of such delay, in my view, it should not affect the basic application for proposed amendment. These added averments are necessary for proper adjudication of issue. The learned Counsel appearing for the petitioner in support of this, has relied on the decision in (Shaikh Yasin Saidullah V. Kasim Abu Hussein & Another) (2004 (4)

Bom. C.R. 769), whereby, an amendment application was considered and it was allowed by this judgment to minimise the litigation and as trial was yet commenced. In the present suit also, I am inclined to allow this amendment application, by keeping all points and defence open between the parties.

4. In view of this, petition is allowed in terms of prayer clause (b). The petition is disposed of accordingly. No order as to cost.

(ANOOP V.MOHTA,J.]